UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
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June 2, 2014

Mr. Rob Newman, Director
Trinity River Corridor Project Office
Department of the Army
Fort Worth District, Corps of Engineers
P.O. Box 17300
Fort Worth, TX 76102-0300

RE: Draft Environmental Impact Statement (DEIS) and Feasibility Report for Dallas Floodway Project in Dallas County, Texas

Dear Mr. Newman:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region office in Dallas, Texas has completed its review of the U.S. Army Corps of Engineers (USACE) DEIS for the Dallas Floodway Project in Dallas County, Texas.

The purpose of the proposed project is to reduce flood risk through flood risk management, enhance ecosystems, and provide greater recreation opportunities within the Dallas Floodway. Additionally, the DEIS describes and analyzes the potential effects from two alternative actions and the No Action alternative relating to noise, air quality, utilities, transportation, safety, hazardous material and wastes, land use, geology and soils, hydrology and hydraulics, socioeconomics, and recreational, biological, water, and visual resources.

Based on our review, we have rated the DEIS as having "Environmental Concerns" and "Informational Needs" (EC-2). Additional information on EPA's rating system can be found at http://www.epa.gov/compliance/nepa/comments/ratings.html. Our rating is based on the need for additional analysis regarding environmental justice and surrounding communities, wetlands, air quality, and cumulative impacts. We have enclosed detailed comments that identify our concerns and recommendations for additional analysis in the Final Environmental Impact Statement (FEIS).

EPA appreciates the opportunity to review the DEIS. Please note that a copy of this letter will be published on our website, http://www.epa.gov/compliance/nepa/eisdata.html, in order to fulfill our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action. Please send our office one copy of the FEIS when it is filed using our *e-NEPA Electronic Filing System* (http://www.epa.gov/compliance/nepa/submiteis/index.html).

If you have any questions or concerns, please contact Kimeka Price at (214) 665-7438 or via email at price.kimeka@epa.gov for assistance.

Sincerely,

for Craig Weeks, Acting Chief
Office of Planning and Coordination

Enclosure

DETAILED COMMENTS
ON THE
U.S. ARMY CORPS OF ENGINEERS
DRAFT ENVIRONMENTAL IMPACT STATEMENT
AND FEASBILITY REPORT
FOR
DALLAS FLOODWAY PROJECT
IN DALLAS CONUTY, TEXAS

The following comments are offered for USACE's consideration in preparation of the FEIS:

Environmental Justice and Surrounding Communities

Demographics for the surrounding communities are listed, and several block groups or tracts are identified as predominantly low income or minority populations. Table 6.4 only presents summary statements, and there does seem to be accompanying description in the DEIS. For example, Table 6-4 states that there would be "temporary, local adverse impacts to low income, minority, and child populations" during construction. However, the DEIS does not describe the specific impacts that would occur to these populations for the various project phases. Further, the specific mitigation measures for environmental justice populations are not described.

Table 1.1 shows potentially affected structures, but there is not corresponding information indicating whether these properties are minority-owned or occur in the locations identified in the DEIS as having a higher proportion of minority or low income residents. Additionally, it is unclear whether any minority-owned businesses or residences would be relocated or displaced by the implementation of the proposed project.

Recommendations:
FEIS should clarify the specific adverse impacts to low income, minority, and child populations, identify corresponding mitigation measures, and clarify if environmental justice populations or businesses would be relocated or displaced.

Historically, there is a risk of flooding associated with the project area. One of the purposes of the proposed project is to reduce flood risk through flood risk management. In the DEIS, it is unclear whether this risk remains or increases during construction phase of the proposed project.

Recommendations:
The FEIS should evaluate the flooding risk and describe specific mitigation measures to be implemented during the construction phase of the proposed project.

Sections 6.7.1.1 and 6.7.2 of the DEIS identify that there would be adverse impacts to minority or low income communities relating to recreation, visual resources, utilities, air quality, and noise during the construction phase of the project, which is estimated to last at least ten (10) years. Chapter 7 of the DEIS discusses and identifies mitigation measures for the proposed project. However, the DEIS does not incorporate a description of specific mitigation measures for addressing the adverse impacts to minority or low income communities.

Recommendation:
FEIS should incorporate specific mitigation measures for adverse impacts to minority or low income populations.

Section 6.7.1.1 includes statements concerning a separate, but connected project (Trinity Parkway EIS). Under Alterative 2, which includes the Trinity Parkway alignment within the levee, it would seem that the storage capacity of the constructed lakes would be lessened. The benefit of the lakes for flood protection is lessened by the fill that would be needed to grade or build up the proposed Parkway roadbed. Therefore, the communities that would benefit from the construction of the lakes (in terms of flood protection), many of whom are low income or minority and may have experienced flooding in the past, may not see any benefits to the proposed project. It is unclear why Alternative 2 is the preferred alternative.

Air Quality

In Section 3.14.3.1 Attainment Status on page 3-191 and Figure 3.14-1 on page 3-190, the DEIS incorrectly identifies the Dallas/Ft. Worth 2008 ozone NAAQS nonattainment area as a nine-county nonattainment area. The nonattainment area consists of ten counties - the nine listed in this section along with Wise County on the northwest corner. Please see EPA's final designation rule for the 2008 ozone NAAQS, published May 21, 2012 (77 FR 30088).

In Section 4.14.3.1 Alternative 2 Overview on page 4-196, the DEIS notes that construction-related increases in PM_{10} and $PM_{2.5}$ would be moderated through implementation of the Special Conservation Measures identified in Chapter 7. However, additional controls are recommended for consideration as possible measures for reducing impacts associated with emissions of nitrogen oxides, volatile organic compounds, carbon monoxide, particulate matter, sulfur dioxide, and other pollutants from construction-related activities, in addition to all applicable local, state, or federal requirements:

Recommendation:
FEIS should incorporate fugitive dust, mobile, and stationary source controls for construction related activities:

Fugitive Dust Source Controls:

- Stabilize open storage piles and disturbed areas by covering and/or applying water or chemical/organic dust palliative where appropriate at active and inactive sites during workdays, weekends, holidays, and windy conditions;
- Install wind fencing and phase grading operations where appropriate, and operate water trucks for stabilization of surfaces under windy conditions; and

- Prevent spillage when hauling material and operating non-earthmoving equipment and limit speeds to 15 miles per hour. Limit speed of earth-moving equipment to 10 mph.

Mobile and Stationary Source Controls:

- Plan construction scheduling to minimize vehicle trips;
- Limit idling of heavy equipment to less than 5 minutes and verify through unscheduled inspections;
- Maintain and tune engines per manufacturer's specifications to perform at EPA certification levels, prevent tampering, and conduct unscheduled inspections to ensure these measures are followed;
- If practicable, utilize new, clean equipment meeting the most stringent of applicable Federal or State Standards. In general, commit to the best available emissions control technology. Tier 4 engines should be used for project construction equipment to the maximum extent feasible;
- Lacking availability of non-road construction equipment that meets Tier 4 engine standards, the responsible agency should commit to using EPA-verified particulate traps, oxidation catalysts and other appropriate controls where suitable to reduce emissions of diesel particulate matter and other pollutants at the construction site; and
- Consider alternative fuels and energy sources such as natural gas and electricity (plug-in or battery).

Air Emissions and Cumulative Effects

In Section 4.14.3.6 Cumulative Impacts on page 4-201, the DEIS identifies the need for a general conformity determination for nitrogen oxides emission increases under Alternatives 2 and 3. Further, the DEIS states that because of these significant air quality impacts, a conformity determination will be prepared prior to project implementation to demonstrate that the calculated net increase of nitrogen oxides emissions will conform to the State Implementation Plan. The conformity determination is a necessary component in evaluating the cumulative impacts of the proposed project.

Recommendation:
FEIS should incorporate the conformity determination in order to fully evaluate cumulative impacts of the proposed project.

Wetlands

The Environmental Protection Agency (EPA) has reviewed the proposed Dallas Floodway Project developed by the City of Dallas and authorized by Section 5141 of the Water Resources Development Act (WRDA) of 2007 to incorporate the City of Dallas Balanced Vision Plan (BVP) Study and Interior Drainage System (IDS) improvements (City of Dallas 2006a, 2009a) within the Dallas Floodway Project. The proposed project includes flood risk management (FRM) elements, ecosystem restoration/habitat enhancement features, land and

water-based recreation enhancement features, and interior drainage plan improvements in and adjacent to the Dallas Floodway in Dallas, Texas.

In regards to Appendix L, Clean Water Act Section 404(b)(1) Analysis, EPA recognizes the distinction offered in this part regarding the different definitions of "enhancement" between that of the USACE Civil Works Program and the USACE Regulatory Program. In its review, EPA acknowledges the Civil Works definition however for the purpose of its regulatory review EPA utilized the Regulatory Program definition as it found in 33 C.F.R. Part 332 *Compensatory Mitigation for Losses of Aquatic Resources*.

The DEIS seeks to evaluate two alternatives in addition to the no-action alternative. Chapter 2, part 2.1, of the DEIS summarizes the differences between Alternatives 2 and Alternative 3, which are the presence and absence of the potential Trinity Parkway Project within the Dallas Floodway, respectively. The two alternatives differ slightly in the amount of wetland impacts and wetland restoration proposed. However, the overarching ecosystem restoration effort proposed under both alternatives poses serious concerns. As currently proposed, the project does not comply with the Clean Water Act Section 404(b)(1) Guidelines. This also impacts the ability to fully evaluate the Alternatives, including the selection of the preferred Alternative for the proposed project. The following comments and recommendations serve as EPA's regulatory review under the Clean Water Act Section 404 (b)(1) Guidelines and provide assistance in addressing compliance with the subject guidelines.

EPA's principle concerns are:

1. Failure to fully account for project impacts to jurisdictional wetlands.
2. The use of storm water wetlands to compensate for impacts to jurisdictional wetlands.
3. Counting wetland enhancement acres as a net gain in wetland acres post project.
4. The use of out-of-kind wetlands to compensate for impacts to jurisdictional wetlands.

Failure to fully account for project impacts to jurisdictional wetlands. In Appendix L on page 45, the DEIS states "[s]ince the Guidelines only restrict dredge and fill in wetlands, they do not apply to the existing wetlands in the proposed meadow that would not be graded, filled, or excavated." This is an incorrect assertion. 40 C.F.R. Part 230.11(h) states in the Determination of Secondary Effects on the Aquatic Ecosystem Section that "Secondary effects are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. Information about secondary effects on aquatic ecosystems shall be considered prior to the final Section 404 action is taken by permitting authorities".

Further, features associated with the project such as road, ditches, berms and paths may result in secondary impact to waters of the United States (WOUS). A common impact associated with such activities can be an alteration of hydrology. An evaluation of secondary impacts to WOUS needs to be conducted for all WOUS including those that are not directly dredged or filled. Additionally, a post construction monitoring plan needs to be developed and implemented to ensure that areas such as these remain in like or better condition. Any

degradation found through monitoring as a result of the project should require additional mitigation.

Recommendations:

- An evaluation of secondary impacts to WOUS needs to be conducted for all WOUS, including those that are not directly dredged or filled.

- A post-construction monitoring plan needs to be developed and implemented to ensure that existing wetlands remain in like or better condition.

- Any degradation found through monitoring as a result of the project should require additional mitigation.

The use of storm water wetlands to compensate for impacts to jurisdictional wetlands.
In Appendix L on page 48, several Stormwater Management Wetlands are identified totaling 46.12 acres, including Flex Field, Meadow, and Crow Lake Wetlands. The DEIS states that "[t]hese wetlands are intended to capture and treat stormwater runoff....." However, ecological attributes of natural wetlands can be overwhelmed and degraded by an increase in hydrology, pollutants and sediment coming directly from stormwater discharges.

EPA's National Pollution Discharge Elimination System (NPDES) Program's Best Management Practices for Stormwater Wetlands states:

> "[a] distinction should be made between using a constructed wetland for stormwater management and diverting stormwater into a natural wetland. The latter practice is not recommended because altering the hydrology of the existing wetland with additional stormwater can degrade the resource and result in plant die-off and the destruction of wildlife habitat. In all circumstances, natural wetlands should be protected from the adverse effects of development, including impacts from increased stormwater runoff."

If the principle purpose of the stormwater wetlands is as expressed in the DEIS, that being primarily for treatment for stormwater runoff, then EPA would not concur that such wetlands are appropriate mitigation for impacts to natural emergent wetlands. If it can be shown that the "stormwater" wetlands are designed such that they can provide the full suite of functions as those of natural emergent wetlands (wetlands most impacted by the project) and that measures to protect them from pollution (including trash and debris in runoff from adjacent recreation features), excess hydrology and sedimentation will be implemented, EPA would reevaluate them as potential mitigation features. As proposed, EPA objects to the use of stormwater wetlands as mitigation under the Section 404(b)(1) analysis.

Recommendations:

- Wetlands created for the capture and treatment of stormwater should be identified in the FEIS as treatment systems for improving water quality.

- Wetlands created for Clean Water Act compensatory mitigation purposes should be designed to function utilizing natural hydrology and protected from detrimental stormwater discharges.

Counting wetland enhancement acres as a net gain in acres. Table 2 in Appendix L in the DEIS indicates that there are direct impacts to 166.37 acres of jurisdictional wetlands anticipated under Alternative 2. The table also shows the Balanced Vision Plan component under Alternative 2 would be responsible for 178.53 acres of enhanced and restored wetlands. Thus, yielding a "net gain" of 12.16 acres. This number is misleading in that it gives the reader the impression that the BVP component will result in an overall increase of wetland acres when in fact there will be a loss of wetland acres. The amount of existing wetlands that will be "enhanced" is 53 acres (Table 7, Appendix L). Those wetlands currently exist and while the environmental lift from enhancement measures can be determined and utilized in mitigation calculations they cannot be counted as an increase in physical wetland acres gained. EPA recommends that Tables 2 and 4 in Appendix L and any associated text (example, TXRAM Appendix C, page C-5, Part Results) be revised to clearly indicate the gains and losses of wetland acres under both alternatives.

Recommendation:
Tables 2 and 4 in Appendix L and any associated sections should be revised to indicate the actual gains and losses of wetland acres under both project alternatives.

The use of out-of-kind wetlands to compensate for impacts to jurisdictional wetlands. The use of out-of-kind wetlands for compensatory mitigation is dependent largely on the type of wetlands impacted and the ecological significance or scarcity of the wetland type being offered as mitigation. In reference to out-of-kind as defined in 33 C.F.R. Part 332 as a resource of a different structural and functional type from the impacted resource, there are two concerns in this regard posed by this project. The first is the use of "forested ponds" to mitigate impacts to forested wetlands. In this case, EPA is concerned that the forested ponds proposed are not appropriate as a mitigation feature for the loss of forested wetlands. As described in Appendix L on page 49, these areas would be 5 feet deep and serve as a bio-filtration area with highly managed hydrology via pumping of water from the lakes into the systems before returning it back to the lakes. EPA considers this a "treatment system" and believes it would not meet the definition of a naturally functioning forested wetland jurisdictionally or ecologically. EPA does recognize the need for forested wetland restoration in the Trinity River Floodway and Watershed at large. As such, EPA does support the use of restoration of bottomland hardwood wetlands as ecologically preferable to restoration of floodplain emergent wetlands. EPA encourages the City of Dallas and the USACE to consider to the fullest extent possible measures to restore naturally functioning forested wetlands in contiguous blocks or corridors along the proposed re-alignment of the Trinity River. The current plans to create forested terraces along the proposed channel restoration is fully supported by EPA.

Recommendation:
FEIS should consider to the fullest extent possible measures to restore naturally functioning forested wetlands in continuous blocks or corridors along the proposed re-alignment of the Trinity River.

In summary, it is EPA's opinion that the conclusion found in Appendix L, Part 3.8 Subpart J: Compensatory Mitigation for Losses of Aquatic Resources is incorrect. Specially, EPA disagrees with the statement made here "For the Proposed Action under either Alternative 2 or 3, the net gains of acreage and/or functions of aquatic resources would be sufficient to offset temporal and permanent losses, such that no further compensatory mitigation would be required." Issues raised by EPA regarding the appropriateness and ecological functions of the proposed stormwater wetlands (46.12 acres) and forested ponds (6.69 acres) as mitigation for natural functioning wetlands and the over accounting of net acres of wetlands gained (53 acres) clearly indicates additional mitigation may be needed. Therefore, EPA's comments and recommendations from regulatory review under the Clean Water Act Section 404(b)(1) should be resolved in the FEIS. EPA is willing to work with the City of Dallas and the USACE to resolve these concerns.

Solid and Hazardous Wastes

The DEIS describes existing conditions and activities with the project area that are subject to Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation, and Liability Act.

Recommendation:
FEIS should incorporate a commitment by USACE to adhere to local, state, and federal laws and regulations for the management, storage, and disposal of solid and hazardous wastes during the construction phase of the project.